

**Assembly Bill No. 2390**

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Passed the Assembly    August 31, 2002

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*Chief Clerk of the Assembly*

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Passed the Senate    August 31, 2002

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_\_ day of  
\_\_\_\_\_, 2002, at \_\_\_\_\_ o'clock \_\_M.

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*Private Secretary of the Governor*

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## CHAPTER \_\_\_\_\_

An act to amend Sections 884, 45040, 67003, 67005, 67006, 67028, 67030, 67036.5, 67039, 67041, 67042, 67044, 67051, 67051.1, 67051.5, 67051.6, 67052, 67053, 67054, 67055, 67056, 67058, 67059, 67059.5, 67060, 67061, 67062, 67081, 67082, 67091, 67094, 67101, 67102, 67103, 67104, 67105, 67107, 67111, 67112, 67121, 67122, 67123, 67124, 67125, 67126, 67131, 67132, 67133, 67134, 67140, 67141, 67142, and 67143 of, to add Sections 67040.5 and 67112.5 to, and to repeal Sections 48004, 67024, 67026, 67027, 67031, 67032, 67032.5, 67033, 67036, 67045, 67051.3, 67055.5, 67055.6, 67092, 67093, 67106, 67121.5, 67131.5, and 67131.6 of, the Food and Agricultural Code, relating to agricultural products commissions, and making an appropriation therefor.

## LEGISLATIVE COUNSEL'S DIGEST

AB 2390, Cedillo. Agricultural products commissions.

(1) Existing law relating to the unlawful possession of agricultural commodities provides that if for any reason an unlawfully possessed commodity that has been seized is not released to the rightful owner after being in the custody of the county agricultural commissioner for a specified amount of time, the commissioner may sell the commodity by public auction or by private sale at fair market value to a commercial packer of the commodity, and if any seized commodity remains unsold after being offered for sale, the commissioner may donate the commodity to a nonprofit charitable organization.

This bill would instead provide that the commissioner may either sell the commodity as specified above or, after 72 hours from the time of seizure, may donate the commodity to a nonprofit charitable organization. If donated, the commodity may not be sold by the receiving party.

(2) Existing law provides that if for any reason unlawfully possessed avocados that have been seized are not released to the rightful owner after being in the custody of the Secretary of Food and Agriculture for a specified amount of time, the secretary may sell the commodity by private sale at fair grower market value and if any seized avocados remain unsold after being offered for sale,



the secretary may donate them to a nonprofit charitable organization.

This bill would instead provide that the secretary may either sell the avocados as specified above or, after 72 hours from the time of seizure, donate the avocados to a nonprofit charitable organization. If donated, the avocados may not be sold by the receiving party.

(2.5) Existing law establishes the Navel and Valencia Orange Advisory Commission, an inspection program relating to those oranges, and imposes certain assessments upon producers of those oranges, as specified. Existing law requires that the assessments be paid into the Food and Agriculture Fund, a continuously appropriated fund, and be expended only for purposes related to the administration of the inspection program. Violation of certain of these provisions is a misdemeanor pursuant to other provisions of law. Existing law also provides that these provisions will be repealed on January 1, 2003.

This bill would extend the operation of the above described provisions indefinitely. By extending the operation of the provisions imposing assessments that are to be deposited into a continuously appropriated fund, this bill would make an appropriation. By extending these provisions of law, the violation of which is an offense, this bill would impose a state-mandated local program.

(3) Existing law provides that there is, within state government, the California Avocado Commission.

This bill would change the composition of the commission to eliminate requirements for commission membership that require its members be affiliated with cooperatives handling avocados, and to make related changes.

(4) Existing law provides for the establishment of a California Avocado Commission for specified purposes.

This bill would expand and clarify those purposes.

(5) Existing law defines the term “distributor” as any person who engages, in this state, in the operation of selling, marketing, or distributing avocados which he or she has produced or purchased or acquired from a producer, or which he or she is marketing on behalf of a producer, whether as owner, agent, employee, broker, or otherwise, as a distributor; and the term “handler” as any person engaged, within this state, as a distributor



in the business of distributing avocados or any person engaged as a processor in the business of processing avocados. Existing law makes reference to a distributor collecting, or making payment to the commission of, assessments to be used by the commission to defray its operating costs, provides that all assessments shall be paid to the commission by the handler first handling avocados, and provides that failure of a handler to pay any assessment as specified subjects the individual handler or the director or officer of a corporate handler to liability in the form of a penalty and interest, as specified.

This bill would replace the reference to “distributor” in the above described provisions with a reference to “handler,” and would expand the group of individuals and entities subject to the above liability for failure to collect or pay the assessment to include limited liability companies and managers and members of corporations or limited liability companies. The bill would make conforming changes to related provisions.

(6) Existing law describes 5 districts with specified boundaries and requires the commission to draw new district lines if the poundage in any existing district varies by more than 10% from the pro rata poundage, as defined.

This bill would instead require the commission to establish 5 districts within the state, each representing approximately 20% of the avocado production in California, would, beginning in the 2000–01 marketing season, require those districts to be reapportioned as set forth above every 5th year.

(7) Existing law provides that if a handler from any cooperative handling avocados or a handler who is not within any cooperative handling avocados markets 30% or more of the volume of avocados in the preceding marketing season, as annually determined by the secretary, that handler may nominate and elect one handler member to the commission.

This bill provides instead that any handler that handles 30% or more of the volume of avocados in the preceding marketing season may appoint one handler member to the commission.

(8) Existing law provides that a person nominated for election to the commission as (a) an independent producer or grower, or (b) a cooperative producer, must sign a sworn statement stating that he or she marketed at least 75% of his or her fruit in the preceding



crop year through other than a membership agreement with a cooperative handler.

This bill would eliminate this requirement.

(9) Existing law provides that the commission has the power to conduct and contract with others to conduct scientific research, including the study, analysis, dissemination, and accumulation of information obtained from the research or elsewhere respecting the inventory, marketing, and distribution of avocados.

This bill would provide that the results of any research conducted by or on behalf of the commission may be used by the commission in any way it deems appropriate, and notwithstanding any other provision of law, may be maintained in confidence by the commission and not disseminated to any person not subject to the provisions relating to the California Avocado Commission. The bill would also require the commission to provide the secretary, on an annual basis, a summary of the programs, activities, and costs under review for the next marketing season.

(10) Existing law makes it a misdemeanor for one engaged in the shipping of avocados or in the wholesale or retail trade of avocados to fail or refuse to furnish to the commission or its duly authorized agents, upon request, information concerning the name and address of the persons from whom he or she has received avocados and the quantity and inventory, by variety, of the avocados.

This bill would delete the above offense and provide instead that it is a misdemeanor to willfully fail to render or furnish a report, statement, or record required by the commission. By revising an existing crime, this bill would impose a state-mandated local program.

(11) Existing law provides that the commission shall adopt regulations for the purpose of according individuals aggrieved by its actions or determinations an informal hearing before the commission or before a committee of the commission designated for that purpose, as specified.

This bill would instead require the commission to establish procedures with respect to aggrieved individuals, and would make various revisions to the provisions relating to those hearings.

(12) The bill would make various changes to provisions relating to the commission and its membership; the continued operation, or suspension of operation, of the provisions relating to

the commission; and assessments. The bill would also make various technical, nonsubstantive, and clarifying changes to the above and related provisions.

(13) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Appropriation: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 884 of the Food and Agricultural Code is amended to read:

884. (a) If for any reason the commodity is not released to the rightful owner after being in the custody of the commissioner for 48 hours or, in the case of a highly perishable commodity, any shorter period of time that the commissioner deems necessary, the commissioner may either sell the commodity by public auction or by private sale at fair market value to a commercial packer of the commodity, or, after 72 hours from the time of seizure, may donate the commodity to a nonprofit charitable organization. If donated, the commodity shall not be sold by the receiving party. If sold, all of the proceeds derived from the sale of the commodity shall be held by the commissioner for a period of not less than six months, during which time the lawful owner of the commodity may submit satisfactory proof of ownership and obtain possession of the proceeds. The commissioner may require the payment by the owner of an amount sufficient to cover the costs incurred for a storage and sale of the commodity, but not to exceed the sale price of the commodity. If, after retention of the proceeds for a period of at least six months, no demand is made or if proof of ownership is not supplied, the commissioner shall deposit the proceeds of the sale of the commodity in the general fund of the county.

(b) If the commodity is unfit for human consumption, the commissioner may destroy it.

SEC. 2. Section 45040 of the Food and Agricultural Code is amended to read:



45040. (a) If for any reason the avocados are not released to the rightful owner after being in the custody of the secretary for 48 hours or, in the case of highly perishable avocados, any shorter period of time that the secretary deems necessary, the secretary may either sell the avocados by private sale at fair grower market value or, after 72 hours from the time of seizure, donate the avocados to a nonprofit charitable organization. If donated, the avocados shall not be sold by the receiving party. If sold by the secretary, all of the proceeds derived from the sale of the commodity shall be held by the secretary for a period of not less than six months, during which time the lawful owner of the avocados may submit satisfactory proof of ownership and obtain possession of the proceeds. The secretary may require the payment by the owner of an amount sufficient to cover the costs incurred for storage and sale of the avocados, but not to exceed the sale price of the avocados. If, after retention of the proceeds for a period of at least six months, no demand is made or if proof of ownership is not supplied, the secretary shall deposit the proceeds of the sale of the avocados with the California Avocado Commission.

(b) If the avocados are unfit for human consumption, the secretary may destroy them.

SEC. 2.5. Section 48004 of the Food and Agricultural Code is repealed.

SEC. 3. Section 67003 of the Food and Agricultural Code is amended to read:

67003. The establishment of a commission is imperative for the efficient development and management of a national and international advertising program which will ensure that the California avocado industry can compete successfully in the marketplace and increase revenues to avocado producers.

SEC. 4. Section 67005 of the Food and Agricultural Code is amended to read:

67005. The commission form of administration created by this chapter is uniquely situated to provide those engaged in the production of avocados the opportunity to avail themselves of the benefits of collective action in the broad fields of advertising; promotion; production, nutrition, and marketing research; quality and maturity standards; the collection and dissemination of crop volume and related statistics; and public education.



SEC. 5. Section 67006 of the Food and Agricultural Code is amended to read:

67006. No action taken by the commission, or by any person in accordance with this chapter or with rules or regulations adopted under this chapter, is a violation of the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), the Unfair Practices Act (Chapter 4 (commencing with Section 17000) of that Part 2), or any statutory or common law against monopolies or combinations in restraint of trade.

SEC. 6. Section 67024 of the Food and Agricultural Code is repealed.

SEC. 7. Section 67026 of the Food and Agricultural Code is repealed.

SEC. 8. Section 67027 of the Food and Agricultural Code is repealed.

SEC. 9. Section 67028 of the Food and Agricultural Code is amended to read:

67028. (a) (1) “Handler” means any person who engages, in this state, in the operation of selling, marketing, or distributing avocados which he or she has produced or purchased or acquired from a producer, or which he or she is marketing on behalf of a producer, whether as owner, agent, employee, broker, or otherwise.

(2) “Handler” also includes any person engaged as a processor in the business of processing avocados.

(b) When the handler is a corporation or a limited liability company, all of the directors, officers, managers, and members of the corporation or limited liability company in their capacity as individuals shall be included, and any liability for failure to collect or make payment of assessments to which a corporate handler or a handler that is a limited liability company may be subject pursuant to this chapter shall include identical liability upon each individual director, officer, manager, or member of the corporation or limited liability company.

(c) (1) “Handler” does not include a cooperative bargaining association that recommends that its members market their avocados through specified handlers and which otherwise is not involved in the sale of avocados.





(2) “Handler” also does not include a retailer, except for a retailer who purchases or acquires from any producer, or handles on behalf of any producer, avocados which were not previously subjected to regulation by the commission.

SEC. 10. Section 67030 of the Food and Agricultural Code is amended to read:

67030. “Handle” means to engage in the business of a handler.

SEC. 11. Section 67031 of the Food and Agricultural Code is repealed.

SEC. 12. Section 67032 of the Food and Agricultural Code is repealed.

SEC. 13. Section 67032.5 of the Food and Agricultural Code is repealed.

SEC. 14. Section 67033 of the Food and Agricultural Code is repealed.

SEC. 15. Section 67036 of the Food and Agricultural Code is repealed.

SEC. 16. Section 67036.5 of the Food and Agricultural Code is amended to read:

67036.5. “Person” means an individual, partnership, corporation, limited liability company, or other business entity.

SEC. 17. Section 67039 of the Food and Agricultural Code is amended to read:

67039. “Producer” or “grower” means any person who is engaged within this state in the business of producing, or causing to be produced, avocados for market.

SEC. 18. Section 67040.5 is added to the Food and Agricultural Code, to read:

67040.5. “Secretary” means the Secretary of the Department of Food and Agriculture.

SEC. 19. Section 67041 of the Food and Agricultural Code is amended to read:

67041. The commission shall establish five districts within the state, each representing approximately 20 percent of the avocado production in California.

SEC. 20. Section 67042 of the Food and Agricultural Code is amended to read:



67042. Beginning in the 2000-01 marketing season, districts shall be reapportioned every fifth year in accordance with the following procedures:

(a) The commission shall determine the average number of pounds of fruit actually produced by producers in each United States Postal Service zip code area in California in the two crop years prior to a referendum conducted pursuant to Section 67131. The average number of pounds of fruit so determined and the poundage from each year shall be used only for purposes of this section.

(b) The commission shall, by adding the pounds in each zip code area, determine the total average number of pounds of avocados produced in California in the two prior crop years.

(c) The commission shall divide the total pounds by five and the resulting number shall be known as the “pro rata poundage.”

(d) The commission shall determine if the poundage in any existing district, as specified in Section 67041, varies by more than 10 percent from the pro rata poundage. In the event that such variance exists, the commission shall draw new district lines so that no district shall vary by more than 10 percent from the pro rata poundage.

SEC. 21. Section 67044 of the Food and Agricultural Code is amended to read:

67044. In the event that the commission is required to redistrict under Section 67042 and is unable to agree upon district boundaries by a two-thirds vote, within 60 days following receipt of information received pursuant to Section 67042, the commission shall notify the secretary who shall, within 10 days of receiving the notification, appoint an arbitrator. The arbitrator shall, within 80 days, reapportion existing districts to comply with the requirements of Section 67042.

SEC. 22. Section 67045 of the Food and Agricultural Code is repealed.

SEC. 23. Section 67051 of the Food and Agricultural Code is amended to read:

67051. There is in the state government the California Avocado Commission. The commission shall be composed of 10 avocado producers who are not handlers, two elected from each district, four avocado handlers elected on a statewide basis, and one public member. The public member shall be appointed to the



commission by the secretary from nominees recommended by the commission.

The secretary shall be a nonvoting ex officio member of the commission.

SEC. 24. Section 67051.1 of the Food and Agricultural Code is amended to read:

67051.1. Notwithstanding Section 67051, any handler that handles 30 percent or more of the volume of avocados in the preceding marketing season, as annually determined by the secretary, may appoint one handler member to the commission. All other handlers shall nominate and elect the remaining handler members pursuant to this chapter. Any handler appointed to the commission pursuant to this section shall maintain his or her eligibility under this section during the entire term of office. Any vacancy caused by the ineligibility of the handler shall be filled in accordance with Section 67053.

SEC. 25. Section 67051.3 of the Food and Agricultural Code is repealed.

SEC. 26. Section 67051.5 of the Food and Agricultural Code is amended to read:

67051.5. The secretary may require the commission to correct or cease any activity or function which is determined by the secretary not to be in the public interest or is in violation of this chapter.

If the commission refuses or fails to cease the activities or functions or to make corrections as required by the secretary, the secretary may, upon written notice, suspend all or a portion of the activities of the commission until the time that the cessation or correction of activities or functions as required by the secretary have been accomplished.

Any written notice, to cease any activity which is the subject of a contract of the commission entered into by the commission prior to the notice, shall not be effective until after the period of notice for termination provided in the contract or 120 days, whichever is shorter.

Upon service of the written notice, the secretary shall notify the commission in writing, of the specific acts which he or she determines are not in the public interest or are in violation of this chapter.



SEC. 27. Section 67051.6 of the Food and Agricultural Code is amended to read:

67051.6. Either the commission or the secretary may bring an action for judicial relief in a court of competent jurisdiction, which may issue a temporary restraining order, permanent injunction, or other applicable relief.

SEC. 28. Section 67052 of the Food and Agricultural Code is amended to read:

67052. Each member on the commission, except the ex officio member, shall have an alternate member, to be elected in the same manner as the member. An alternate member shall, in the absence of the member for whom he or she is an alternate, sit in place of the member on the commission and shall have, and be able to exercise, all the rights, privileges, and powers of the member when sitting on the commission.

SEC. 29. Section 67053 of the Food and Agricultural Code is amended to read:

67053. Any vacancy of a member position on the commission occurring for any reason including the failure of any member to continue in his or her position due to a change in status making him or her ineligible to serve, or through death, removal, or resignation, shall be filled, for the unexpired portion of the term, by the alternate member for that position. Any vacancy of an alternate member position on the commission occurring for any reason, including the alternate's move to the member position as described in Section 67052, or the failure of any alternate member to continue in his or her position due to a change in status making him or her ineligible to serve, or through death, removal, or resignation, shall be filled for the unexpired portion of the term by a majority vote of the commission. Any person filling a vacant member or alternate member position shall fulfill all the qualifications set forth in this article as required for the member or alternate member whose office he or she is to fill.

SEC. 30. Section 67054 of the Food and Agricultural Code is amended to read:

67054. (a) Producer members and their alternates on the commission shall have a financial interest in producing, or causing to be produced, avocados for market. In order to be elected a member or alternate, a producer shall, at the time of the election,



have a financial interest in the production of avocados within the district in which the producer stands for election.

(b) A producer may stand for election in any district in which the producer has a financial interest in the production of avocados.

(c) A producer who chooses to stand for election in a particular district shall not stand for election in any other district for a period of four years from the date of his or her most recent election to the commission. However, this subdivision does not apply in an election to fill vacancies created by the reapportionment of districts pursuant to Section 67042.

(d) Handler members and their alternates shall have a financial interest in handling avocados for markets.

(e) The public member shall not have any financial interest in the avocado industry. Except for the nomination of another public member, the public member and his or her alternate on the commission shall have all the powers, rights, and privileges of any other member on the commission.

SEC. 31. Section 67055 of the Food and Agricultural Code is amended to read:

67055. The term of office of all members and alternates, except the ex officio member, shall be for two years from the date of their election and until their successors are qualified; provided, however, that of the first members of the commission from each district, one shall serve for one year, and one shall serve for two years, with the determination of term of each such member to be made by lot. Subsequent to the election of the first members and alternates of the commission, the terms of the members and alternates shall continue to be staggered, as provided in this section. Terms of office of each member and alternate shall be limited to four consecutive terms.

SEC. 32. Section 67055.5 of the Food and Agricultural Code is repealed.

SEC. 33. Section 67055.6 of the Food and Agricultural Code is repealed.

SEC. 34. Section 67056 of the Food and Agricultural Code is amended to read:

67056. The commission shall be and is hereby declared and created a corporate body. It has the power to sue and be sued, to contract and be contracted with, and has and possesses all of the powers of a corporation. It may adopt a corporate seal. Copies of



its proceedings, records, and acts, when certified by an officer, are admissible in evidence in all courts of the state, and are prima facie evidence of the truth of all statements therein.

SEC. 35. Section 67058 of the Food and Agricultural Code is amended to read:

67058. The commission shall have the power to appoint committees composed of both members and nonmembers of the commission to advise the commission in carrying out this chapter.

SEC. 36. Section 67059 of the Food and Agricultural Code is amended to read:

67059. Unless otherwise specified, a quorum of the commission shall be any 11 voting members. The vote of a majority of members present at a meeting at which there is a quorum shall constitute the act of the commission.

SEC. 37. Section 67059.5 of the Food and Agricultural Code is amended to read:

67059.5. The secretary or his or her representatives shall be notified and may attend each meeting of the commission.

SEC. 38. Section 67060 of the Food and Agricultural Code is amended to read:

67060. No commission member or alternate or member of a committee who is a nonmember of the commission shall receive a salary. Each commission member and alternate, except the ex officio member, and each member of a committee who is a nonmember of the commission shall receive a sum of not to exceed one hundred dollars (\$100) per day, as established by the commission, for each day spent in actual attendance at or in traveling to and from meetings of the commission or committees of the commission, or on authorized assignment for the commission, together with the necessary traveling expenses and meal allowances, as approved by the commission.

SEC. 39. Section 67061 of the Food and Agricultural Code is amended to read:

67061. All moneys received by any person from the assessments levied under the authority of this chapter or otherwise received by the commission, shall be deposited in such financial institutions as the commission may designate and shall be disbursed by order of the commission through a member, officer, or employee designated for that purpose. Any such person shall be bonded by a fidelity bond, executed by a surety company



authorized to transact business as such in the State of California, in favor of the commission, conditioned upon the strict accounting of all funds of the commission in the penal sum of not less than five hundred thousand dollars (\$500,000).

SEC. 40. Section 67062 of the Food and Agricultural Code is amended to read:

67062. The state is not liable for the acts of the commission or its contracts, except for state-directed supervision of the avocado inspection program, as specified in Chapter 9 (commencing with Section 44971) of Division 17, which is performed under an agreement that specifies that each of the parties shall be responsible and liable for that party's decisions made pursuant to the agreement, and that each of the parties shall not be held liable by the other party for the decisions made pursuant to the agreement. Payment of all claims arising by reason of the administration of this chapter or acts of the commission shall be limited to the funds collected by the commission. No member of the commission or alternate member, or any employee or agent thereof, shall be personally liable on the contracts of the commission nor shall a member, alternate member, or employee of the commission be responsible individually in any way to any producer or handler or any other person for error in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, or employee, except for his or her own individual acts of dishonesty or crime. No member or alternate member shall be held responsible individually for any act or omission of any member of the commission. The liability of the members shall be several and not joint, and no member shall be liable for the default of any other members.

SEC. 41. Section 67081 of the Food and Agricultural Code is amended to read:

67081. The secretary shall establish a list of producers in each district. In establishing the lists, the secretary shall require that handlers in the state submit the names, mailing addresses, district numbers, and handled volume of each producer from whom they purchased or handled avocados in the preceding marketing season. The request for information from handlers shall be in writing and shall be filed by the handlers within 90 days following receipt of the written request.





Any producer of avocados whose name does not appear upon the secretary's list of producers may have his or her name established on the list by filing with the commission a signed statement, identifying himself or herself as a producer. Failure to be on the list does not exempt the producer from paying assessments under this chapter.

SEC. 42. Section 67082 of the Food and Agricultural Code is amended to read:

67082. Subsequent to the first election of members under this chapter, persons to be elected to the commission shall be selected pursuant to nomination and election procedures adopted by the commission and concurred in by the secretary.

SEC. 43. Section 67091 of the Food and Agricultural Code is amended to read:

67091. The powers and duties of the commission include, but are not limited to, all of the following:

(a) Adopt and, from time to time, alter, rescind, modify, and amend all proper and necessary rules, procedures, and orders to carry out this chapter and in the exercise of its powers and the performance of its duties, including the adoption of rules to regulate appeals from any rule, procedure, or order of the commission.

(b) Administer and enforce this chapter, and to do and perform all acts and exercise all powers incidental to or in connection with or deemed reasonably necessary, proper, or advisable to effectuate the purposes of this chapter.

(c) Employ a person, to serve, at the pleasure of the commission, as president and chief executive officer of the commission and other personnel, including legal counsel.

(d) Establish offices, incur expenses, enter into any and all contracts and agreements, and create liabilities and borrow funds in advance of receipt of assessments that may be necessary, at the discretion of the commission, for the proper administration and enforcement of this chapter and the performance of its duties.

(e) Keep accurate books, records, and accounts of all of its dealings, which books, records, and accounts are subject to an annual independent audit by an auditing firm approved by the secretary. The independent audit shall be made a part of an annual report to all producers and handlers of avocados, copies of which shall also be submitted to the Legislature. In addition, the secretary





may, as he or she determines necessary, conduct, or cause to be conducted, a fiscal and compliance audit of the commission.

(f) Promote the sale of avocados by advertising and other promotional means for the purpose of maintaining and expanding present markets and creating new and larger intrastate, interstate, and foreign markets for avocados and to educate and instruct the public with respect to avocados and the uses of the several varieties and the healthful properties and nutritional value of avocados.

(g) Enter into cost-sharing advertising with other products considered, by the commission, to be fair and equitable to both parties.

(h) Educate and instruct the wholesale and retail trade with respect to proper methods of handling and selling avocados; arrange for the performance of dealer service work providing display and other promotional materials; make market and inventory surveys and analyses; present facts to and negotiate with state, federal, and foreign agencies on matters which affect the avocado industry; and undertake any other activities which the commission may determine appropriate for the maintenance and expansion of present markets and the creation of new markets for avocados.

(i) Make, in the name of the commission, contracts to render service in formulating and conducting plans and programs, and any other contracts or agreements that the commission may deem necessary for the promotion of the sale of avocados.

(j) Conduct and contract with others to conduct scientific research, including the study, analysis, dissemination, and accumulation of information obtained from the research or elsewhere respecting the inventory, marketing, and distribution of avocados. The results of any research conducted by or on behalf of the commission may be used by the commission in any way it deems appropriate, and notwithstanding any other provision of law, may be maintained in confidence by the commission and not disseminated to any person not subject to this chapter.

(k) Accept and match contributions of private, local, state, or federal funds and make contributions of commission funds to other persons or to local, state, or federal agencies for purposes of promoting, enhancing, and maintaining the California avocado industry.



(l) Publish and distribute without charge, a bulletin or other communication for dissemination of information relating to inventory, marketing, and other information of value to the commission and the avocado industry to producers, handlers, and the public.

(m) Establish an assessment rate to defray operating costs of the commission.

(n) Establish an annual budget.

(o) Investigate and prosecute civil violations of this chapter and file complaints with appropriate law enforcement agencies or officers for suspected criminal violations of this chapter.

(p) Carry out the requirements prescribed in Chapter 9 (commencing with Section 44971) of Division 17.

(q) To provide to the secretary, on a quarterly basis, a summary of the programs, activities, and costs under review for the next marketing season.

SEC. 44. Section 67092 of the Food and Agricultural Code is repealed.

SEC. 45. Section 67093 of the Food and Agricultural Code is repealed.

SEC. 46. Section 67094 of the Food and Agricultural Code is amended to read:

67094. (a) To prevent unfair trade practices which are detrimental to California's avocado industry, including, but not limited to, deception and misinformation, the commission shall collect and disseminate to any and all interested persons, handler f.o.b., market price information based on sales which have occurred.

(b) The identity of each handler reporting information and the information reported under this section shall be kept confidential and not made public under any circumstances. Information that gives industry totals, averages, and other similar data may be disclosed by the commission.

(c) The procedure for the collection and dissemination of the information pursuant to this section shall be approved by the secretary.

SEC. 47. Section 67101 of the Food and Agricultural Code is amended to read:

67101. The commission shall, not later than November 1 of each year, establish the assessment for the following marketing



season beginning November 1st and ending October 31st. In no event shall the assessment exceed  $6\frac{1}{2}$  percent of the gross dollar value of the year's sales of avocados by all producers to handlers, or which are sold by handlers on behalf of producers. Expenditures for administrative purposes within the maximum assessment shall not exceed  $2\frac{1}{2}$  percent of the gross dollar value of sales of avocados by all producers to handlers, or which are sold by handlers on behalf of producers. Assessments provided for in this section shall be upon the producer. The handler shall deduct that assessment from either amounts paid by him or her to the producer or amounts retained by him or her if the handler is also the producer, and the handler shall be a trustee of those funds until they are paid to the commission at the time and in the manner prescribed by the commission.

In no event shall the combined assessment of the commission and any state marketing order exceed  $6\frac{1}{2}$  percent of the gross value of the year's sales of avocados by all producers to handlers, or which are sold by handlers on behalf of producers.

SEC. 48. Section 67102 of the Food and Agricultural Code is amended to read:

67102. This chapter does not apply to producers who produce avocados on a noncommercial basis for the producer's home use or where the avocado trees are used only for ornamental purposes. Producers from whom assessments are collected may apply for the refund of assessment payments following the close of any marketing season in which payments have been made, and the commission shall refund assessment payments if the producer demonstrates to the satisfaction of the commission that the avocados were produced for noncommercial purposes.

SEC. 49. Section 67103 of the Food and Agricultural Code is amended to read:

67103. Handlers shall keep a complete and accurate record of all avocados shipped by him or her and the name of the producer whose avocados were shipped. The records shall be in simple form and contain such information as the commission shall prescribe. The records shall be preserved by the handler for a period of two years and shall be offered and submitted for inspection at any reasonable time upon written demand of the commission or its duly authorized agent.



SEC. 50. Section 67104 of the Food and Agricultural Code is amended to read:

67104. All the proprietary information obtained by the commission or the secretary from handlers, including, but not limited to, the names and addresses of producers, is confidential and shall not be disclosed except when required by a court order in a judicial proceeding involving this chapter. Information on volume shipments, inventory, crop value, and any other information which is required for reports to governmental agencies and the commission, and other information which the handlers request from the commission that gives only totals, excluding individual handler information, may be disclosed by the commission so long as the information excludes individual handler data which shall be kept confidential as provided in this section.

SEC. 51. Section 67105 of the Food and Agricultural Code is amended to read:

67105. All assessments shall be paid to the commission by the handler first handling avocados who shall be primarily and personally liable for the payment of the assessment. Failure of the handler to collect the assessment from any producer shall not exempt the handler from that primary liability. Any producer or handler subject to this section who fails to file a return or pay any assessment within the time required shall pay to the commission a penalty of 10 percent of the amount of the assessment determined to be due, and, in addition, 1<sup>1</sup>/<sub>2</sub>-percent interest per month on the unpaid balance.

SEC. 52. Section 67106 of the Food and Agricultural Code is repealed.

SEC. 53. Section 67107 of the Food and Agricultural Code is amended to read:

67107. The commission shall reimburse the secretary for all expenditures incurred by the secretary carrying out his or her duties and responsibilities under this chapter, except for the expenses incurred for any action under Section 67051.6.

SEC. 54. Section 67111 of the Food and Agricultural Code is amended to read:

67111. It shall be a misdemeanor punishable by imprisonment in the county jail not exceeding six months, by a fine not exceeding



five thousand dollars (\$5,000), or by both the fine and imprisonment, for any person to do any of the following:

(a) Willfully to render or furnish a false report, statement, or record required by the commission.

(b) Willfully fail to render or furnish a report, statement, or record required by the commission.

(c) Secrete, destroy, or alter records required to be kept under this chapter.

SEC. 55. Section 67112 of the Food and Agricultural Code is amended to read:

67112. The commission shall establish procedures for the purpose of according individuals aggrieved by its actions or determinations an informal hearing before the commission or before a committee of the commission designated for that purpose. Appeals from decisions of the commission may be made to the secretary. The determination of the secretary shall be subject to judicial review upon a petition filed with the appropriate superior court.

SEC. 56. Section 67112.5 is added to the Food and Agricultural Code, to read:

67112.5. (a) The commission may commence civil actions and utilize all remedies provided in law or equity for the collection of assessments and civil penalties, and to obtain injunctive relief or specific performance, with respect to this chapter and the rules and regulations adopted under this chapter.

(b) A court shall issue to the commission any requested writ of attachment or injunctive relief upon a prima facie showing by verified complaint that a named defendant has violated this chapter or any other rule or regulation of the commission, including, but not limited to, the nonpayment of assessments. No bond shall be required to be posted by the commission as a condition for the issuance of any writ of attachment or injunctive relief.

(c) A writ of attachment shall be issued pursuant to Chapter 5 (commencing with Section 485.010) of Title 6.5 of Part 2 of the Code of Civil Procedure, except that the showing specified by Section 485.010 is not required. Injunctive relief shall be issued pursuant to Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the showing of irreparable harm or of inadequate remedy at law specified by Section 526 or 527 is not required.



(d) Upon entry of any final judgment on behalf of the commission against any defendant, the court shall enjoin the defendant from conducting any type of business regarding avocados until there is full compliance with and satisfaction of the judgment.

(e) The commission is entitled, upon a favorable judgment for the commission, to receive reimbursement for any reasonable attorney's fees and other actual related costs incurred in any action commenced by the commission for the enforcement of this chapter. Venue for actions commenced by the commission may be established at the domicile or place of business of the defendant or in the county of the principal office of the commission. The commission may be sued only in the county of its principal office.

SEC. 57. Section 67121 of the Food and Agricultural Code is amended to read:

67121. This chapter, except as necessary to conduct such vote, shall not become operative until the secretary finds, in a referendum conducted by the secretary in which at least 40 percent of the total number of producers, from the list established by the secretary, producing at least 40 percent of the total volume of avocados marketed during the last completed marketing season participate, either one of the following:

(a) Sixty-five percent or more of the producers certified by the secretary who voted in the referendum, voted in favor of this chapter, and the producers so voting marketed 51 percent or more of the total quantity of avocados marketed in the preceding marketing season by all of the producers who voted in the referendum.

(b) Fifty-one percent or more of the producers who voted in the referendum voted in favor of this chapter and the producers so voting marketed 65 percent or more of the total quantity of avocados marketed in the preceding marketing season by all of the producers who voted in the referendum.

SEC. 58. Section 67121.5 of the Food and Agricultural Code is repealed.

SEC. 59. Section 67122 of the Food and Agricultural Code is amended to read:

67122. The secretary shall establish a period in which to conduct the referendum which shall not be less than 10 days nor



more than 60 days in duration, and may prescribe any additional procedure as may be necessary to conduct the referendum.

SEC. 60. Section 67123 of the Food and Agricultural Code is amended to read:

67123. Nonreceipt of a ballot shall not invalidate the referendum.

SEC. 61. Section 67124 of the Food and Agricultural Code is amended to read:

67124. If the secretary finds that a favorable vote has been given as provided in Section 67122, he or she shall certify and give notice of that favorable vote to all producers and handlers whose names and addresses may be on file with the secretary. This chapter shall become operative on the 15th day after certification by the secretary and publication to producers and handlers.

SEC. 62. Section 67125 of the Food and Agricultural Code is amended to read:

67125. If the secretary finds that assent has not been given as provided in Section 67121, he or she shall so certify and declare all provisions of this chapter inoperative.

SEC. 63. Section 67126 of the Food and Agricultural Code is amended to read:

67126. Prior to holding the referendum, sureties shall post a bond or security, acceptable to the secretary, in an amount which the secretary shall determine to be sufficient to pay the cost of the referendum should the election determine that the operation of this chapter is to be suspended.

SEC. 64. Section 67131 of the Food and Agricultural Code is amended to read:

67131. Between November 1, 1980, and October 31, 1981, and every fifth year thereafter, the secretary shall cause a referendum to be conducted by the commission among producers to determine whether this chapter shall be reapproved and continued in effect. The operations of this chapter shall be reapproved and continued in effect if the secretary finds that a majority of the eligible growers voting in the referendum voted in favor of continuing the operations of this chapter. If the secretary finds that a favorable vote has been given, he or she shall so certify and this chapter shall remain effective. If the secretary finds that a favorable vote has not been given, he or she shall so certify and declare this chapter and the commission suspended upon the





expiration of the then-current marketing season. Thereupon, the operations of the commission shall be wound up and funds distributed in the manner provided in Section 67133. No bond or security shall be required for the referendum.

SEC. 65. Section 67131.5 of the Food and Agricultural Code is repealed.

SEC. 66. Section 67131.6 of the Food and Agricultural Code is repealed.

SEC. 67. Section 67132 of the Food and Agricultural Code is amended to read:

67132. Upon the finding of 11 of the members of the commission that this chapter has not tended to effectuate its declared purposes, the commission may recommend to the secretary that the operations of the commission shall be suspended; provided, that the suspension shall not become effective until the expiration of the current marketing season. The secretary shall, upon receipt of the recommendation, or upon a petition filed with him or her requesting the suspension, signed by 15 percent of the producers by number who produced not less than 15 percent of the volume in the immediately preceding year, cause a referendum to be conducted among the listed producers to determine if the operation of this chapter and the operations of the commission shall be suspended, and shall establish a referendum period, which shall not be less than 10 days nor more than 60 days in duration. The secretary is authorized to prescribe any additional procedure necessary to conduct the referendum. At the close of the established referendum period, the secretary shall tabulate the ballots filed during the period. If at least 40 percent of the total number of producers, on a list established by the secretary marketing 40 percent of the total volume marketed by all producers during the last completed marketing season, participate in the referendum, the secretary shall suspend this chapter upon the expiration of the current marketing season, if he or she finds either one of the following:

(a) Sixty-five percent or more of the producers who voted in the referendum voted in favor of the suspension, and the producers so voting marketed 51 percent or more of the total quantity of avocados marketed in the preceding marketing season by all of the producers who voted in the referendum.





(b) Fifty-one percent or more of the producers who voted in the referendum voted in favor of suspension, and the producers so voting marketed 65 percent or more of the total quantity of avocados marketed in the preceding season by all of the producers who voted in the referendum.

SEC. 68. Section 67133 of the Food and Agricultural Code is amended to read:

67133. After the effective date of suspension of this chapter and of the commission, the operations of the commission shall be wound up, and any asset of the commission shall be liquidated and the proceeds, along with any and all moneys remaining held by the commission, collected by assessment and not required to defray the expenses of winding up and terminating operations of the commission, shall be returned upon a pro rata basis to all persons from whom assessments were collected in the immediately preceding current marketing season. However, if the commission finds that the amounts so returnable are so small as to make impractical the computation and remitting of a pro rata refund to those persons, any moneys remaining after payment of all expenses of winding up and terminating operations shall be withdrawn from the approved depository and paid to any existing state or federally authorized avocado program. If no program exists, the moneys shall be paid into the State Treasury as unclaimed trust moneys.

SEC. 69. Section 67134 of the Food and Agricultural Code is amended to read:

67134. Upon suspension of this chapter and the commission, a notice shall be posted on a public bulletin board to be maintained by the secretary in his or her office, and a copy of the notice shall be published in a newspaper of general circulation in each district. The commission shall mail a copy of the notice of suspension to all producers and handlers affected by the suspension whose names and addresses are on file.

SEC. 70. Section 67140 of the Food and Agricultural Code is amended to read:

67140. The commission may recommend to the secretary the adoption of avocado quality standards or engage in any other activity authorized pursuant to the California Marketing Act of 1937 (Chapter 1 (commencing with Section 58601) of Part 2 of



Division 21) that is in accordance with the procedures specified in that act, unless otherwise specified in this article.

SEC. 71. Section 67141 of the Food and Agricultural Code is amended to read:

67141. Any standards or activities adopted pursuant to this article shall be implemented by the secretary at the beginning of the marketing season next succeeding the date in which they were approved by the secretary.

SEC. 72. Section 67142 of the Food and Agricultural Code is amended to read:

67142. Any standards or activities recommended by the commission and concurred in by the secretary, shall not be operative until approved in the manner specified in Section 67121.

SEC. 73. Section 67143 of the Food and Agricultural Code is amended to read:

67143. The commission shall serve as the advisory body to the secretary on all matters pertaining to this article.

SEC. 74. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



Approved \_\_\_\_\_, 2002

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*Governor*

